IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2934 of 2006

==========

MANSUKHBHAI CHHAGANBHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :
MS BANNA S DUTTA for Petitioner(s) : 1,MS SUBHADRA G PATEL for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 06/09/2006

ORAL ORDER

1. The petitioner-detenu has filed this petition challenging the order of detention dated 31.01.2006 passed by Commissioner of Police, Surat City under the provisions of sub-Section (1) of Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 (hereinafter referred to as the 'PASA Act'). The Police Commissioner, Surat City came to the conclusion that the petitioner was immoral traffic offender within the meaning of the PASA Act and in pursuance of the order passed by him, the petitioner is under detention as immoral traffic offender.

2. Ms Banna Dutta, learned Advocate for the petitioner has invited my attention to the order of detention dated 31.01.206 by which petitioner-detenu was arrested and sent to District Jail, Jamnagar as well as to the grounds supplied by the detaining authority, therein. As the grounds of detention, one criminal case is shown registered against the petitioner-detenu being C.R. No. 270 of 2005 dated 26.12.2005.

2.1 She has further submitted that in the order of detention it was stated that the petitioner-detenu is carrying on anti-social activities and on the basis of solitary offence of 'immoral traffic offender' registered against the petitioner-detenu, he was termed as 'Immoral Traffic Offender' within the meaning of Section 3(1)of the P.A.S.A. Act. It was also stated in the impugned order that as the said activities of the detenu are dangerous and affecting maintenance of 'public order', order of detention has been passed against him.

2.2 Ms. Dutta has placed reliance on a decision of this Court passed in Special Civil Application No. 3881 of 2005 and in the case of Vahidbhai Saiyadbhai Sheikh v. State of Gujarat & Ors reported in 2003(3) GLH 697.

3. Heard Ms Dutta, learned advocate for the petitioner and learned AGP for the State at length. The affidavit-

in-reply as filed by the detaining authority and placed on record is also taken into consideration.

4. In the case of Akhtar Hussain Kadarbhai(supra), this Court has held that the investigation papers in the solitary crime is insufficient material to infer a certain habit of the detenu and that on the basis of solitary offence it would be far fetching to draw inference that the petitioner was likely to commit such crimes by second nature of the detenu and by confirmed habit, he was likely to commit such crime again and again.

4.1 In the case of Vahidbhai Saiyadbhai Sheikh (supra) this Court in para 9 of the judgement has held as under:

> “Strikingly, in this case, the authority did not choose even to filed prosecution and the question of detenu being released on bail could be considered when prosecution is filed and some material is placed before the detaining authority that the detenu was likely to be released on bail. The detaining authority, in this case, instead has chosen to rely upon on incident and from the said incident, the detaining authority reached to subjective satisfaction that the detenu was likely to continue his activities in future when there was no material at all on record revealing such repeating tendency on the part of the detenu. The order of detention, therefore, is vitiated by vice of non-application of mind.”

As a result of hearing and perusal of records, this Court is of the opinion that the order of detention is required

to be quashed and set aside.

5. In the result, this petition is allowed. The order of detention dated 31.01.2006 passed by Commissioner of Police, Surat city is hereby quashed and set aside. The petitioner-detenu is, therefore, ordered to be set at liberty forthwith, if he is not required in connection with any other case by the Authority. Rule is made absolute. Direct service is permitted.

(K.S. Jhaveri,J.)

Divya//